1949.

File No. S.S.C. Examination II/49(R)

Legal Department.

B **BRANCH**

Subject:—

Rules under the Secondary School Certificate Examination Act, 1948

E

P

File No. S.S.C. Examination II/49 (R)

Gen. 194 e.

263B

Office of the R.L.A.

Para.3 of the Registrar's letter at p.37.- The words "shall be deemed equivalent to the Entrance Examination" used in the draft Statute 204M were considered inappropriate for the principal reason that they naturally give rise to the impression that the matter is being dealt with by the University as one of equivalance of examinations, with the inevitable implication that the University may exercise their power of changing the equivalance to the prejudice of the right which has be n conferred upon ~~him~~ a student who ~~passed~~ passes the S.S.C. Examination of being enrolled as a student of the University under section 28A inserted in the Bombay University Act by the Bombay Secondary School Certificate Examination Act,1948.

2. It appeared from a discussion with the Registrar of the Bombay University that this particular wording was adopted with a view to emphasise that the University wish to exercise their right of charging admissi.n fees even to a student who having passed the S.S.C. Examination was entitled to be enrolled as a student of the University. That right has not in any way been affected by any of the provisions of the Bombay Secondary School Certificate Examination Act,1948; and, in order to assert that right, it is unnecessary to introduce in the Statute any suggestion of equivalance of examinations. The intention which the University authorities have in view can be brought out as has been done in the tentative draft Statute sent herewith. It is for the E. & I.D. to decide, in consultation with the University, if necessary, whether the draft Statute in the form sent herewith should eventually be approved.

3. Incidentally it may be pointed out that the proposal of the Under Secretary at p.42 to ~~him~~ cancel the notification of 1934 issued under sec.4A of the Bombay University Act would result in depriving the University of the power to hold higher examinations for the benefit of the students of colleges situated in Indian States and other territories

27/7

outside the Province. This is not intended by the Bombay Secondary Schools Examination Act, 1948. What is necessary under and contemplated by section 34 of that Act is that Government is to issue a notification in exercise of the powers conferred by Explanation to clause (kk2) of sub-section (2) of section 33 of the Bombay University Act specifying the territory of Goa and the area of certain Indian States over which the Bombay Government does not exercise any extra-provincial jurisdiction for the purposes of that clause. This will contique the right of the Bombay University to hold higher examinations for the students referred to above and at the same time will curtail their right to hold the Entrance Examination for students in Indian States over which the Bombay Government has extra-provincial jurisdiction.

Sd/- P.N.Lad.
Remembrancer of Legal Affairs.

U.R. to E. & I.D.No.2311 dated the 26th February 1949.

MAP/-
19/6/

Legal Department.

The Secondary School Certificate Examination Board has proposed certain amendments to the Bombay Secondary School Certificate Examination Regulations, 1948. Under section 27 of the Act (Bom XLIX of 1948) alterations of the Regulations require the previous sanction of the Government. The Amendments suggested by the Board are at pages 8-21 of the correspondence section of the E.D. file. The amendments have been indicated by the E.D. in the copy of the Regulation at slip X, and have been renumbered in the manner required by the Board. The Secretary, E. D. has raised certain points in his note at pages 4-8 ante with reference to these amendments. He has also referred to regulations as renumbered by the E. D. in the copy at slip X. The replies to the Secretary, E.D.'s note are given seriatim.

Para- (1) The rule of construction referred to by the D.P.I is contained in section 16 of the Bombay General Clauses Act, 1904 That section applies to any Bombay Act and not to regulations made thereunder. Besides, in the case under consideration, two separate provisions- one regarding the appointment and the other regarding their removal and dismissal- are made. The seprate provision for the appointment of clerks and Class IV servants is contained in sub-clause (vi) of Regulation 3(B) and sub-clause (iii) of Regulation 4(b) respectively. It is therefore necessary to amend both the Regulations by adding the following words to each as proposed to be amended.

"or to suspend him pending inquiry or otherwise to correct. punish him

Para (2) The view taken by the Secretary, E.D. is correct. The amendment may however, be recast as follows:-

> to sanction the purchase or hire of stores, paper, stationery, furniture or other equipement after calling for tenders and to scrutinise them when received ; Provided that it shall not be necessary

VGP.
5-6-56.

to call for any tender if the value of stores, ~~pap~~ paper, stationery, furniture or other equipement required is less than Rs. 1,000 or if the above articles are urgently required or if the Standing Committee does not think it advisable to call for the reasons recorded by it."

Paras. (3), (4) (5) and (6). No remarks.

Para. (7). The word "recognised Secondary High teachers of recognised high schools" are used in section (3) (2) (c). The amendments proposed by the Secretary, E.D. have therefore, been recast.-

"(iii)(a) if a secondary teacher in a recognised High School, he has taught the subject to the tenth or eleventh standard of such school and;

(b) if a teacher in a Primary Training Institute he has taught the subject to such institution -

for 3 years - if he holds a post graduate degree in the subject; or

for 5 years - if he is a Second Class graduate in the subject; or

for 7 years - if he is pass class graduate in the subject.;"

Para. (8) No remarks.

Para. (9)- In Regulations 12 to 18, Paper- setters, Examiners and Moderators are distinguished one from the other. And in Regulation 15(3) it is provided that no Moderator shall simultaneously function as an Examiner in any subejct. It is a fact that under Regulation ~~in any~~ 14(3) a Moderator is appointed out of the panel of Paper-setters and Examiners. But that fact could not necessitate the amendment proposed by the Secretary, E.D.

VGP.

5-6-56.

Paras. (10) and (11). The view taken by the Secretary, E.D. is correct and the amendments suggested by him are in order.

Para. (12). The amendments proposed by the Board in Regulation 29(now newly numbered 26) are ultra vires for the following reasons:

The expression "recognised high school" has been defined in section 2(h) of the Act to mean a high school recognised by the DPI Bombay Province or an officer authorised by him in this behalf or a high school registered by any University established by law in the Province. As a consequence of this Act, the power of the Bombay University to conduct the Matriculation Examination was curtailed and the power to register high school for that purpose was abolished, and a new power to register high school both for the purposes of the Entrance Examination and the Secondary School Certificate Examination Board to recognisse or approve a high school under the Act. A high school must be either a high school recognised by the D.P.I. or a high school registered by any University established by law in this Province This being the legal position the Regulation as it stands may be retained. The Secretary, E.D. has suggested amendments which are dependent upon the amendments proposed by the Board and cannot survive in view of what is stated above. (Vide R.L.A's opinions No. 165, dated 6th January 1949, and No. 830, dated 22nd January 1949.

Para. (13). The action contemplated by clause (3) of Regulation 32 is to be taken without loss of time. The Board has approved of the principle of excluding any candidate from the Examination Hall if he is found to be suffering from any infectious or contagious disease. To give effect to this principle is a ministerial function and this responsibility can be entrusted to any person who, in the opinion of the Board, is fit for the purpose. The clause may be however worded as follows :-

VGP.

8-6-56.

"No candidate suffering from any infectious or contagious disease shall be admitted to an Examination Hall. If any such case comes to the notice of the conductor of the Examination he may exclude such candidate from an Examination Hall."

Para. (14). read with para. 9 of E.D. office note.-

Existing Regulation 39 is proposed to be substituted by new regulation numbered 37 whereunder the power is given to the Standing Committee to make rules for the condition of deficiencies in marks obtained by candidates. The E.D states that this regulation is based on the Ordinance 164 of the University of Bombay. Thereis nothing wrong under the Bombay University Act to make that Ordinance. The power to make Ordinance on the subject vests under section 35 of that Act in the Syndicate and the Syndicate itself has been authorised to frame rules. But under the Bombay Secondary School Certificate Examination Act the legal position is different. It is the Board which is competent to make regulations under section 26 and this power cannot be further delegated to the Standing Committee. The Standing Committee may suggest draft of regulations, but he framing of regulations must e made by the Board. The points raisnd by the Secretary, E.D. with reference to this aendment do not survive.

Incidentally it may be observed that what is proposed to be amended are the First Regulations made by the Provincial Government under section 28 of the Act. These Regulations are to remain in force till new regulations are mae by the Board under section 26 of the Act. The Board may therefore be asked to take early steps to make such new regulations.

S.D

Additional Secretary to Government.

U.R. to Education Department, Np. 14092, dated the 6th Dec. 1949.

VGP.

5-6-56.